

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

Focal Communications Corp. of Illinois )  
and Illinois Bell Telephone Company d/b/a )  
Ameritech Illinois )

Petition for Review of )  
Arbitrated Interconnection Agreement )

Docket No. 00-0526

CHIEF CLERK'S OFFICE

JUL 26 12 45 PM '00

ILLINOIS  
COMMERCE COMMISSION

**COMMENTS OF AMERITECH ILLINOIS**  
**REGARDING REVIEW OF ARBITRATED AGREEMENT**

Pursuant to 83 Ill. Admin. Code 762.110, Illinois Bell Telephone Company ("Ameritech Illinois") respectfully submits its Comments regarding review of the arbitrated interconnection agreement between Focal Communications Corporation of Illinois ("Focal") and Ameritech Illinois. Section 762.110 of the Commission's rules states that "[a]ll arbitrated agreements submitted under this Part shall be accompanied by written comments and draft proposed decisions supporting either approval or rejection of the agreement." This pleading is submitted in compliance with that rule, and Ameritech Illinois's proposed decision is attached hereto. For the reasons stated herein and in its briefs in the arbitration proceeding (Docket No. 00-0027), Ameritech Illinois opposes approval of portions of the interconnection agreement and requests that the Commission reject those portions of the agreement and refuse to approve the agreement to the extent it does not include provisions necessary to comply with federal law and the public interest.

To be approved, provisions of interconnection agreements that were arbitrated under Section 252 of the Telecommunications Act of 1996 ("1996 Act") must meet the standard set forth in Section 252(e)(2)(B), which provides:

(2) Grounds for rejection.—The State commission may only reject—

\* \* \*

- (B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of Section 251, including the regulations prescribed by the Commission pursuant to Section 251, or the [pricing] standards set forth in subsection (d) of this section.

Negotiated provisions of interconnection agreement cannot be approved if they “discriminate[] against a telecommunications carrier not a party to the agreement” or are “[in]consistent with the public interest, convenience, and necessity.” 47 U.S.C. 252(e)(2)(A).

For all the reasons set forth in Ameritech Illinois’ Application for Rehearing, Brief on Exceptions, and Post-Hearing Briefs filed in Docket No. 00-0027,<sup>1/</sup> the interconnection agreement resulting from that arbitration fails to meet the above standards and, therefore, must be rejected by the Commission. Specifically:

- (1) The contract currently allows Focal to charge, for reciprocal compensation, the composite tandem rate rather than the lower end-office rate for terminating local traffic. (See Focal/Ameritech Illinois Proposed Interconnection Agreement, Pricing Schedule). For the reasons set forth in Ameritech Illinois’ briefs in Docket 00-0027, that rate violates controlling federal law and this portion of the proposed agreement cannot be approved.
- (2) The contract currently treats calls to Internet Service Providers (“ISP-bound” calls) as subject to reciprocal compensation. (Proposed Interconnection Agreement, Section 4.7). For the reasons set forth in Ameritech Illinois’ briefs in Docket 00-0027, this requirement (i) was illegally imposed in the arbitration decision, as the classification of ISP-bound traffic is an issue beyond the Commission’s jurisdiction; and (ii) violates controlling FCC precedent.

---

<sup>1/</sup> Ameritech Illinois requests that the Commission take administrative notice of these briefs and the record in Docket 00-0027 under 83 Ill. Admin. Code 200.640.

- (3) The contract currently allows Focal to treat ISP-bound traffic as "local exchange service" when certifying, for the purpose of converting a special access arrangement to a loop-dedicated transport UNE combination, that it will use the UNE combination to provide a "significant amount of exchange service" to a particular end-user. (Proposed Interconnection Agreement, Sch. 9.5, Section 2.0.7). Under the FCC's June 2, 2000 Supplemental Order Clarification in CC Docket 96-98, ISP-bound traffic cannot be treated as local for purposes of such certifications. Thus, the contract must be revised to comply with federal law.
- (4) The contract currently allows Focal to provide "foreign exchange" service in competition with Ameritech Illinois, without paying anything for its extensive use of Ameritech Illinois' interexchange transport network and tandem switching to provide that service. (See Proposed Interconnection Agreement, Section 4.3.12). The contract also would allow Focal to charge reciprocal compensation on calls to its foreign exchange customers. That situation is blatantly anticompetitive and conflicts with the decisions of at least three other State utility commissions.
- (5) The contract currently includes rates for unbundled network elements ("UNEs") and interconnection that are based on a hypothetical most-efficient network configuration under FCC rule 47 C.F.R. 51.505(b). (Proposed Interconnection Agreement, Pricing Schedule at n.1). That rule, however, has been vacated by the Eighth Circuit Court of Appeals as violating the plain language of the 1996 Act. Iowa Utilities Bd. v. FCC, Nos. 96-3321 et al. (slip op. 8th Cir. July 18, 2000) ("IUB II"). Thus, rates based on the assumption of a hypothetical most-efficient network configuration do not "meet[] the requirements of . . . the [pricing] standards set forth in" Section 252(d).

Except Issue 5, which is newly created by the IUB II decision, these matters are thoroughly addressed in Ameritech Illinois' briefs in Docket 00-0027 and that discussion need not be repeated here. Issues 3 and 4, however, require some elaboration based on legal developments that occurred subsequent to the Commission's May 8, 2000 arbitration decision in Docket 00-0027.

**I. ISP-BOUND TRAFFIC CANNOT BE TREATED AS LOCAL EXCHANGE SERVICE UNDER THE FCC'S JUNE 2, 2000 SUPPLEMENTAL ORDER CLARIFICATION.**

Under the FCC's November 5, 1999 UNE Remand Order and November 24, 1999 Supplemental Order in CC Docket 96-98, CLECs may seek to convert existing special access

arrangements to loop-transport UNE combinations under certain conditions. One of those conditions is that the CLEC will use the facilities to provide “a significant amount of local exchange service to a particular end user.” Supplemental Order, para. 5 and n.9. The CLEC must “certify” to the incumbent that it meets this requirement. Id. Over Ameritech Illinois’ objections, the arbitration decision in Docket 00-0027 found that, for purposes of these certifications, Focal could treat ISP-bound traffic as “local exchange service.”

The arbitration decision, however, did not account for the FCC’s Supplemental Order Clarification in CC Docket 96-98, issued on June 2, 2000. The Supplemental Order Clarification established specific standards that CLECs must meet before certifying that they will provide a “significant amount of local exchange service” over the requested facilities. The FCC provided CLECs with three options for meeting this standard. *Each* option requires the CLEC to provide a certain amount of “*local voice service*” and “*local dialtone service*” over the requested facilities. Supplemental Order Clarification, para. 22 (emphasis added). By definition, ISP-bound traffic is *not* either “voice” service or “dialtone” service; rather, it is a data service. Consequently, the FCC’s order precludes Focal from treating ISP-bound traffic as “local exchange service,” and a contract that allows Focal to do so violates federal law.<sup>2/</sup> Accordingly, the Proposed Interconnection Agreement needs to include language precluding Focal from treating ISP-bound traffic as local for purposes of these certifications, as Ameritech Illinois proposed during arbitration.

---

<sup>2/</sup> The contract also violates the FCC’s repeated holdings that service to ISPs is exchange access service, not local exchange service. See Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket 98-147 et al., Order on Remand at para. 16 (rel. Dec. 23, 1999).

**II. THE PROPOSED AGREEMENT VIOLATES FEDERAL LAW AND IS CONTRARY TO THE PUBLIC INTEREST BECAUSE IT FORCES AMERITECH ILLINOIS TO PAY RECIPROCAL COMPENSATION ON NON-LOCAL TRAFFIC AND TO SUBSIDIZE FOCAL'S COMPETING FOREIGN EXCHANGE SERVICES.**

Ameritech Illinois and Focal both provide "foreign exchange" or "FX" services in direct competition with one another. Foreign exchange service allows a customer in one location (say, downtown Chicago) to have a telephone number with an NXX code assigned to another geographic location (say, Naperville). This allows customers in the Naperville rate center to which that NXX code is assigned to call the FX customer in Chicago for the price of a local call – even though that travels the distance of a toll call and would otherwise be billed as a toll call. FX service is especially attractive to businesses that receive many incoming calls and want customers to be able to reach them without toll charges.

When Ameritech Illinois provides FX service, the FX customer pays for the transport and tandem switching between the Naperville rate center (or wherever the NXX code is assigned) to the FX's customer's actual location in another rate center. Thus, the FX customer and the caller receive a benefit by allowing a toll call at the local rate, yet Ameritech Illinois is still fully compensated for the use of its interexchange network. By contrast, when Focal provides an FX service, the call still travels over Ameritech Illinois' network all the way from Naperville to the FX customer's rate center (or wherever Focal has its point of interconnection ("POI") with Ameritech Illinois), but *nobody* – not Focal, not Focal's FX customer, and not the caller – compensates Ameritech Illinois for the interexchange transport and tandem switching used to carry the call from Naperville to downtown Chicago. And to add insult to injury, Focal charges

Ameritech Illinois reciprocal compensation for Focal's role in terminating the call, even though the call is by definition an interexchange toll call and thus not subject to reciprocal compensation.

This creates an anticompetitive free ride on Ameritech Illinois' network, giving Focal an unearned cost advantage in providing services in direct competition with Ameritech Illinois. It also violates federal law by requiring Ameritech Illinois to pay reciprocal compensation on what is plainly not local exchange traffic. Ameritech Illinois proposed contract language to remedy this problem, but the Commission rejected it. Ameritech Illinois continues to believe that some relief from this anticompetitive free ride is essential, and is willing to consider other, compensation-based rather than facilities-based options for dealing with the issue. Something, however, must be done to prevent the contract from violating federal law (by requiring reciprocal compensation on what are actually interexchange toll calls) and the public interest (by giving Focal an anticompetitive free ride on Ameritech Illinois' network).

At least three state commissions have agreed with Ameritech Illinois' position, two in very recent decisions. On June 30, 2000, the Maine Public Service Commission held that:

If indeed, a carrier is offering a reasonable and legitimate FX service, the normal expectation is that end users who dial a "local" number will not be charged toll charges for those calls, even though those calls are routed to a place to which toll charges normally apply. *Another normal expectation, however, is that the FX subscriber (the customer that causes the call to go to the remote exchange) pays rates for that transport service that take into account the lost toll revenue.*

\* \* \*

Brooks is free to offer calling areas of its own design *so long as, when it uses the facilities of others to accomplish that end, it pays for those facilities on the basis of how their owners define them for wholesale purposes (interexchange or local).*<sup>3/</sup>

---

<sup>3/</sup> Maine Public Utilities Commission Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber, Docket No. 98-578;

The California Public Utility Commission rendered a similar holding regarding FX service:

We conclude that, whatever method is used to provide a local presence in a foreign exchange, *a carrier may not avoid responsibility for negotiating reasonable interexchange intercarrier compensation for the routing of calls from the foreign exchange by redefining the rating designation from toll to local.*

\* \* \*

The provision of a local presence using an NXX prefix rated from a foreign exchange . . . does not eliminate the obligations of other carriers to physically route the call so that it reaches its proper designation. *A carrier should not be allowed to benefit from the use of other carriers' networks for routing calls to ISPs while avoiding payment of reasonable compensation for the use of those facilities.*

\* \* \*

*We conclude that all carriers are entitled to be fairly compensated for the use of their facilities and related functions to deliver calls to their destination, irrespective of how a call is rated on its NXX prefix. Thus, it is the actual routing points of interconnection, and the terms of the interconnection agreement – not the rating point – of a call which properly forms the basis for considering what compensation between carriers may be due.<sup>4/</sup>*

The Public Utility Commission of Texas recently clarified that no matter how one treats ISP-bound traffic for purposes of reciprocal compensation in general, CLECs are *not* allowed to demand reciprocal compensation on FX calls, where the incumbent does the bulk of the work.

The Commission also reaffirms its previous determination that reciprocal compensation arrangements do not apply to calls that originate from and terminate to an end-user within

---

New England Fiber Communications d/b/a Brooks Fiber Proposed Tariff Revisions to Introduce Regional Exchange (RX) Service, Docket No. 99-593 (Maine P.S.C. June 30, 2000) (“Maine FX Order”) at 10, 13.

<sup>4/</sup> Order Instituting Rulemaking on the Commission’s Own Motion Into Competition For Foreign Exchange Service, Rulemaking 95-04-043; Order Instituting Investigation on the Commission’s Own Motion Into Competition for Local Exchange Service, Investigation 95-04-044, Decision No. 99-09-029 (Cal. P.U.C. Sept. 2, 1999) at 10-11 (“California FX Order”).

a mandatory single or multi-exchange local calling area . . . . *The Commission finds that to the extent that FX-type and 8YY traffic do not terminate within a mandatory local calling scope, they are not eligible for reciprocal compensation.*<sup>5/</sup>

These commissions recognized that CLECs providing FX service cannot simply demand that incumbents to provide interexchange transport and tandem switching for the CLEC customers FX calls without any compensation for the use of the incumbents network. Indeed, forcing the incumbents to subsidize the CLECs' competing services is the antithesis of fair competition. Moreover, CLECs cannot impose reciprocal compensation on FX calls because such calls are, by their very nature, routed as toll calls and do not terminate in the same local calling area or rate center where they originate. The FCC's regulations require reciprocal compensation only for the transport and termination of "local telecommunications traffic," which is defined as traffic "that originates and terminates within a local service area established by the state commission." 47 C.F.R. 51.701(a)-(b)(1). FX traffic does not originate and terminate in the same local area and therefore cannot, as a matter of law, be subject to reciprocal compensation.

Maine FX Order at 13; California FX Order at 10-11; Texas FX Order at 17.

Accordingly, to ensure that the agreement comports with federal law on reciprocal compensation and with sound, procompetitive public policy, the Commission should follow the reasoning of these other States and require Ameritech Illinois and Focal to include in the agreement appropriate provisions regarding inter-carrier compensation on FX traffic.

---

<sup>5/</sup> Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996, Docket No. 21982 (P.U.C. of Texas, July 13, 2000) ("Texas FX Order") at 17.



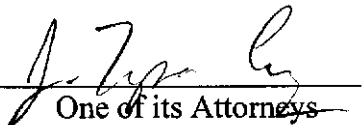
CONCLUSION

For the reasons set forth herein, the Commission should reject the Proposed Interconnection Agreement.

Dated: July 25, 2000

Respectfully submitted,

ILLINOIS BELL TELEPHONE COMPANY

By:   
One of its Attorneys

Christian F. Binnig  
Dennis G. Friedman  
J. Tyson Covey  
Mayer, Brown & Platt  
190 S. LaSalle Street  
Chicago, Illinois 60603  
(312) 782-0600

Mark A. Kerber  
Ameritech Illinois  
225 W. Randolph St.  
Floor 29B  
Chicago, IL 60601  
(312) 727-7140

## PROPOSED ORDER OF AMERITECH ILLINOIS

### STATE OF ILLINOIS ILLINOIS COMMERCE COMMISSION

Focal Communications Corp. of Illinois	)	
and Illinois Bell Telephone Company d/b/a	)	
Ameritech Illinois	)	Docket No. _____
	)	
Petition for Review of	)	
Arbitrated Interconnection Agreement	)	

### ORDER

#### By the Commission:

This docket arises from an arbitration proceeding involving Focal Communications Corporation of Illinois ("Focal") and Illinois Bell Telephone Company ("Ameritech Illinois"). On May 8, 2000, the Illinois Commerce Commission ("Commission") entered an Arbitration Decision in Docket No. 00-0027 and, thereafter, the parties, pursuant to Section 252(e) of the Telecommunications Act of 1996 ("Act"), initiated this docket by filing with the Commission an interconnection agreement which comports with that decision. The purpose of this proceeding is to determine whether or not that interconnection agreement should be approved by the Commission. Pursuant to 83 Ill. Admin. Code 762.110, Ameritech Illinois filed comments opposing the approval of portions of the interconnection agreement, while Focal filed comments in support of the Commission approving the interconnection agreement.

Interconnection agreements entered pursuant to the Act must meet the standards set forth in Section 252(e)(2)(B). The Commission finds that portions of the interconnection agreement resulting from the arbitration in Docket No. 00-0027 fails to meet these standards and, therefore, the agreement

must be rejected. In particular, the Arbitration Decision reached the wrong conclusion (and, hence, the interconnection agreement contains inappropriate provisions) on the following issues: rates for reciprocal compensation; inter-carrier compensation for ISP traffic; conversion of special access service to UNEs; and points of interconnection for FX service.

First, the interconnection agreement inappropriately allows Focal to charge the composite tandem rate of \$0.005175 per minute rather than the lower end office rate for terminating local traffic. FCC and Commission precedent establishes that a CLEC is permitted to charge the ILEC's tandem rate only if it establishes that its switch serves a geographic area comparable to the ILEC's tandem switch and performs functions similar to those performed by that switch.<sup>1/</sup> The arbitration decision incorrectly found (and, as a result, the interconnection agreement incorrectly assumes) that Focal satisfies this test.

Second, the interconnection agreement also incorrectly requires Ameritech Illinois to pay reciprocal compensation to Focal when Focal delivers Internet traffic to its ISP customers that is originated by ISP subscribers that are local exchange customers of Ameritech Illinois. This provision of the interconnection agreement is the result of the erroneous conclusion that ISP-bound calls constitute local traffic subject to reciprocal compensation. The Commission does not have jurisdiction to decide the issue. Moreover, the determination that ISP traffic is local is contrary to the FCC's *Advanced Services Remand Order*.<sup>2/</sup> Even in the absence of the *Advanced Services Remand Order*, there is no record evidence to support the conclusion that ISP traffic is in fact local, and even

---

<sup>1/</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, ¶ 1090, (Aug. 8, 1996) ("*First Report and Order*").

<sup>2/</sup> *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147 *et al.*, ¶ 16 (Dec. 23, 1999).

if such evidence existed, Focal failed to identify its costs to deliver calls to ISPs and failed to prove that those costs approximated Ameritech Illinois' cost to terminate local traffic (and hence justify the use of Ameritech Illinois' reciprocal compensation rate, especially the tandem-based rate). Significantly, the reciprocal compensation rate for ISP traffic allowed by the interconnection agreement overcompensates Focal, and ignores the fact that Ameritech Illinois does not cause the costs that Focal incurs when it delivers traffic to its ISP customers.

Third, the arbitration decision inappropriately concludes (and hence the interconnection agreement improperly reflects) that Focal should be allowed to treat ISP traffic as local exchange service for purposes of the certifications it must make when converting a special access arrangement to a loop/transport UNE combination. That conclusion is contrary to law and directly conflicts with the FCC's authority on the nature of ISP traffic. In the *Advanced Services Remand Order*, ¶¶ 16, 35, 43, the FCC held that the service CLECs provide to ISPs is exchange access service, *not local exchange service*. Moreover, the FCC held in the *Supplemental Order Clarification* in CC Docket 96-98 (June 2, 2000 at para. 22) that only "local voice service" and "local dialtone service" qualify as local exchange service for purposes of these certifications. Service to ISPs is data service, not voice or dialtone service.

Fourth, the interconnection agreement incorrectly concludes that Focal should not be required to establish some arrangement to compensate Ameritech Illinois for Focal's extensive use of Ameritech Illinois' interexchange transport and switching network to provide foreign exchange service. This forces Ameritech Illinois to provide Focal with free interexchange traffic transport, which no provision of the Act requires or condones. To the contrary, this provision of the interconnection agreement amounts to an unconstitutional taking of Ameritech Illinois' property

without compensation. This agreement also violates the Act by effectively requiring Ameritech Illinois to pay reciprocal compensation on foreign exchange traffic, even though such traffic is by definition and necessity not local exchange traffic.

The Commission also notes that the recent decision in Iowa Utils. Bd. v. FCC, Nos. 96-3321 et al. (slip op. 8<sup>th</sup> Cir. July 18, 2000) calls into question the legality of the rates set forth in the pricing schedule to the agreement.

In sum, the above mentioned portions of the interconnection agreement fail to meet the standards of Section 252(c) and, therefore, the agreement must be rejected.

### FINDINGS AND ORDERING PARAGRAPHS

Having considered the entire record herein, the Commission is of the opinion and finds the following:

1. Illinois Bell Telephone Company is engaged in the business of providing telecommunications services to the public in the State of Illinois and, as such, is a telecommunications carrier within the meaning of Section 13-202 of the Public Utilities Act;
2. the Commission has jurisdiction over Illinois Bell Telephone Company and the subject matter of this proceeding;
3. as discussed herein, parties of the interconnection agreement entered pursuant to the arbitration decision in Docket No. 00-0027 do not comport with the requirements of Section 252(c) of the Telecommunications Act of 1996.

IT IS THEREFORE ORDERED that the portions of the interconnection agreement discussed herein are rejected and the agreement must be revised accordingly and resubmitted for approval.

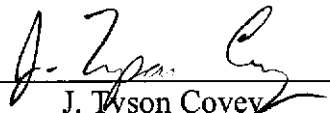
IT IS FURTHER ORDERED that this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

(SIGNED)  
Chairman

**CERTIFICATE OF SERVICE**

I, J. Tyson Covey, an attorney, hereby certify that I caused a copy of the Appearance of attorneys on behalf of Illinois Bell Telephone Company and of the Comments of Ameritech Illinois Regarding Review of Arbitrated Agreement to be served on counsel for Focal Communications Corp., Mr. Paul Rebey, by messenger, overnight mail, or U.S. Mail this 25th day of July, 2000.

  
\_\_\_\_\_  
J. Tyson Covey